

Policy on Equity in Start-Up Companies

Policy Number 61XX

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Executive Responsibility VP-Research

Functional Responsibility Technology Transfer

Purpose & Scope

INTRODUCTION

The Board of Trustees has determined that the best interests of Wright State University ("University") will be served if employees who create new technology are afforded the opportunity to hold Significant Financial Interests in companies that are engaged in commercializing their inventions. Employee participation with outside companies in technology development activities will facilitate the University's goal of making its research available for public use by giving researchers an incentive to develop inventions with commercial applications. The opportunity to participate in commercialization activities is also essential to the University's efforts to attract and retain highly qualified employees and students. The procedures and guidelines set forth in this policy are intended to enable the University to realize the benefits of such entrepreneurial activities while protecting the integrity of its research and educational mission and to comply with University policies and with applicable federal and state laws.

WHO IS COVERED BY THIS POLICY

This policy applies to all university employees, students, and other representatives or agents. The policy serves as an exception to the Ohio Ethics Law and related statutes (R.C. Chapter 102, R.C. 2921.42, R.C. 2921.43), which might otherwise apply. The Ohio Ethics Commission retains authority to provide assistance to the University in establishing the minimum requirements and guidelines for the policy and to address any matter outside its scope.

DEFINITIONS

University Entrepreneur: University employee or student who utilizes University Intellectual Property disclosed under the University's Policy on Intellectual Property (see [here](#)) and who desires to hold a Significant Financial Interest in a Technology Commercialization Company.

Conflict of Commitment: A conflict arising when a University employee's activities outside of the University affect, or appear reasonably likely to affect, the manner or extent to which the employee carries out his or her University responsibilities.

Conflict of Interest Management Plan: A written document which identifies, explains, and outlines a comprehensive management plan for any situation where there is a divergence between an individual's private interests and his or her professional obligations to the University or its students.

Intellectual Property Committee: A committee appointed by the Vice Provost for Research and is responsible, among other duties, for providing oversight of Technology Commercialization Companies pursuant to the responsibility provided to it by this policy. The committee shall be composed of the AVP for Research, Director of Technology Transfer, General Counsel, Director of Research Compliance, and others as determined by the VP for Research.

License Agreement: An agreement between the University and a Technology Commercialization Company setting forth the terms and conditions of use, make, sell, offer to sell, and manufacture of University Intellectual Property by the Technology Commercialization Company.

Significant Financial Interest:

As defined in the University's Conflict of Interest Policy (see <https://policy.wright.edu/policy/6110-research-conflict-interest-and-financial-disclosure-policy>).

Technology Commercialization Company (hereinafter "**Company**"): A legal entity, generally a new start-up, which desires to commercially develop University Intellectual Property.

University Intellectual Property: Discoveries, inventions, or patents that result from research or investigations conducted in any experiment station, bureau, laboratory, research facility, or other University facility, or by any University student or employee acting within the scope of their employment, or with funding, equipment, or infrastructure provided by or through the University, pursuant to 3345.14 of the Ohio Revised Code, as amended.

APPROVAL PROCEDURES

The procedures below should be followed to obtain authorization to hold a Significant Financial Interest in a Technology Commercialization Company.

(i) Technology sought to be commercialized should be disclosed via an Invention Disclosure on file in the Office of Technology Transfer.

(ii) As a prerequisite of the granting of any license to University Intellectual Property, a Company must provide the Intellectual Property Committee with a viable business plan including, at a minimum, the following:

1. The market opportunity and business model to address the opportunity;
2. The value proposition;
3. A capitalization plan demonstrating access to funds necessary for company seed financing and growth;
4. A proposed management team;
5. Milestones for product development and commercialization.

(iii) The Outside Interest Committee (OIC), via the Research Compliance Officer, will be consulted in the drafting of a conflict of interest management plan.

(iv) The Intellectual Property Committee will be responsible for establishing the business terms of the transaction between the Company and the University. The Intellectual Property Committee will review the sufficiency of the business terms and conflict of interest management plans relating to the Company and University Entrepreneur.

(v) The Vice Provost for Research, upon recommendation of the Intellectual Property Committee, should approve the business terms before any licensing or other business agreements relating to a Technology Commercialization Company are finalized with the University.

(vi) University employees or students who wish to participate in a Company should not, as a general rule, participate in the ongoing negotiation of option and licensing terms between a Company and the University. As soon as possible, but not to exceed 24 months, third parties, such as seasoned Company management and/or legal counsel, shall perform this function.

RESPONSIBILITY FOR UNIVERSITY DUTIES

1. Employee Responsibilities

University employees are encouraged to develop discoveries and inventions with commercial potential; however, they should do so with due regard to the broader teaching and research mission of the University. University Entrepreneurs should not allow their Significant Financial Interest in a Technology Commercialization Company to interfere with their teaching, research, or other positional responsibilities including relationships with colleagues or students. While faculty members are permitted by the relevant Outside Employment Policy in the Faculty Handbook or the "Collective Bargaining Agreement Between Wright State University and the WSU Chapter of the American Association Of University Professors" (hereinafter referred to as "CBA"), and this policy to engage in specified private business activities relating to their institutional positions, they continue to be responsible for the performance level of all of their teaching, research and service obligations. Similarly, staff members must not allow approved entrepreneurial activities to interfere with their institutional responsibilities.

2. Responsibilities of Administrators

- (i) Deans, department chairs and directors are responsible for ensuring that university employees and students are familiar with and comply with this policy.
- (ii) The Intellectual Property Committee should review Business Plans and License Agreements

relating to active Technology Commercialization Companies at least annually from the date of approval by the Vice Provost for Research and whenever there has been a material change in the Technology Commercialization Company's anticipated performance as described in the Business Plan.

3. Reporting Business Activities

Private business activities that are not subject to this policy because they are unrelated to the employee's institutional duties are nevertheless subject to other University policies on paid external consulting, conflicts of interest and commitment, and intellectual property. Private business activities that may relate to a University employee's externally sponsored research shall be reported in accordance with the University Policy 6110, Research Conflict of Interest and Financial Disclosure.. Private business activities that may relate to a faculty member's departmental responsibilities shall be reported in writing to the Department Chair in accordance with college bylaws, the Faculty Handbook or the CBA, as appropriate.

4. Use of Institution Facilities

University facilities, equipment and other resources may be used for research benefiting a company in which a university employee or student has a Significant Financial Interest only pursuant to an appropriate contractual agreement between the Technology Commercialization Company and the University.

5. Management of Start-up Companies

University Entrepreneurs are authorized to hold managerial positions in the Technology Commercialization Company according to the Technology Commercialization Company management plan exhibited in the approved Business Plan and Conflict of Interest Management Plan. However, professional management should be brought in to the Company at the earliest opportunity, but not to exceed 24 months.

6. Management Positions in Existing Companies

An employee or student who acquires a Significant Financial Interest in a previously established company that contracts with the University to commercialize his or her research should not serve as a director, officer or employee of that company, except as otherwise approved by the University on a case-by-case basis, using the review procedures that apply to University Entrepreneurs.

7. Leave to Pursue Private Business Activities

University Entrepreneurs should not allow their corporate responsibilities to create a Conflict of Commitment. In the case that a Conflict of Commitment occurs, University Entrepreneurs shall take appropriate measures to resolve the conflict such as a reduction of appointment or other approved leave mechanism. Professional Development Leave available under R.C. 3345.28 shall not be used for private business purposes.

8. Student Employment with Technology Commercialization Companies

Technology Commercialization Companies may provide employment or internship opportunities for university students. However, if (a) the student is enrolled in a course taught by the University Entrepreneur, (b) the University Entrepreneur is a member of the student's thesis or dissertation committee, or (c) the University Entrepreneur is the student's advisor or the director of his or her thesis or dissertation research, certain precautions must be taken. Such students may only be employed by the Technology Commercialization Company pursuant to a signed agreement disclosing the students' rights and obligations and addressing the potential conflicts which might arise. Students who, though not employed wish to perform research benefiting a Technology Commercialization Company, may only do so pursuant to a sponsored research agreement and/or formal internship agreement through the University that addresses the potential conflicts which might arise.

9. Contracts Unrelated to Technology Development

Technology Commercialization Companies may enter into agreements with the University that are unrelated to research or technology development for the purchase, sale or rental of equipment, supplies, or services only to the extent consistent with University policies and not prohibited by Ohio Revised Code Chapter 102 and Sections 2921.42 and 2921.43.

10. Investments by Employees Not Involved with Development of the Technology

Employees and students who are not directly involved with research and development of technology licensed to a Technology Commercialization Company may hold equity interests in that company only to the extent not prohibited by Ohio Revised Code, including but not limited to Chapter 102 and Sections 2921.42 and 2921.43. Under such circumstances, the Vice Provost for Research will consult the OIC to determine what Conflict of Interest management plans need to be developed and maintained.

11. Regulatory Review Boards

Institutional regulatory review boards including, for example, the University's Institutional Review Board and Institutional Animal Care and Use Committee, may be utilized for research benefiting a Technology Commercialization Company only pursuant to Conflict of Interest management plans.

12. Equity Dilution and Cap

While significant employee equity ownership may be inherent in a newly formed company, it is expected that their ownership interests, as a percentage of the total outstanding shares or membership interests of the company, will not exceed 49% initially and will decrease as the company develops and attracts additional equity. University Entrepreneurs and members of their immediate family (including a spouse and any dependent child, as defined in Ohio Revised Code Section 102.01 (D)) should not hold or control more than twenty five percent (25%) of the outstanding equity in a Technology Commercialization Company on an ongoing basis, except otherwise agreed upon in writing with the University. In order to ensure the observance of this principle, the agreement between Company and university shall contain enforceable milestones for the dilution of these equity interests. Failure to comply with the agreed-upon milestones may result in the Company's inability to engage in sponsored research or employ university students, or other sanctions included in the commercialization agreements entered into under this policy.

13. Principal Investigators

University Entrepreneurs may assume the role of Principal Investigator in sponsored research projects funded by Companies in which they have a Significant Financial Interest only pursuant to a Conflict of Interest Management Plan approved by the Outside Interest Committee and reviewed by the Intellectual Property Committee.

14. University Policies

University Entrepreneurs remain University employees so long as they maintain employment on a part- or full-time basis with the University. As such they continue to be bound by all applicable University policies. In particular, they remain bound by the University's policy on Intellectual Property for discoveries and inventions generated from their remaining university activity, unless otherwise agreed upon in writing on a case-by-case basis. Ownership and management of the Intellectual Property created within the scope of the Business Plan shall be set forth in the License Agreement between the University and the Technology Commercialization Company.

15. Implementation of Policy

In implementing this policy, all members of the Board of Trustees of Wright State University are governed by Chapter 102 and sections 2921.42 and 2921.43 of the Ohio Revised Code.

*Adapted from the Ohio Ethics Commission's "Model Rules Governing Faculty And Staff Participation In Companies Commercializing Their Institutional Research," pursuant to Ohio Revised Code 3345.14(D).

Under Review